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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER OWEN SKINNER,

Defendant and Appellant.

H033532

(Monterey County

Super. Ct. No. SS032880)

In this second appeal,¹ defendant Alexander Owen Skinner appeals the trial court's denial of his post judgment motion to correct presentence credits.

STATEMENT OF THE FACTS AND CASE

Defendant was convicted after a court trial in March 2004 of second degree robbery. The court imposed a six-year prison term, and suspended execution of sentence. The court ordered defendant to serve 365 days in county jail, with 193 days credit for time served. As a condition of probation, the court ordered defendant to participate in a substance abuse program his probation officer deemed necessary, including a residential treatment program.

On May 4, 2007, the court found defendant in violation of probation. On June 20, 2007, the court ordered executed the previously imposed six-year prison term.

¹ The first appeal is *People v. Skinner* (Oct. 22, 2004, H027179) [nonpub. opn.], in which this court affirmed the judgment of the trial court.

At the time, the court gave defendant a total of 447 days of custody credit consisting of 389 days actual credit, and 58 days good time/work time credit.

Fourteen months after the imposition of the prison sentence, defendant filed a motion in pro per entitled, “Motion to Correct Presentence Credits and Declaration of Petitioner with Exhibits.”

In September 2008, the court denied defendant’s motion without a hearing. Defendant filed a notice of appeal from this denial of the motion in October 2008.

DISCUSSION

Defendant asserts the trial court abused its discretion in summarily denying his motion to correct presentence credits without a hearing. At issue in this case is 204 days defendant served in the Sun Street Centers residential treatment facility as a condition of this probation.

If a residential treatment facility is sufficiently custodial, a defendant is entitled to presentence credit for the time spent there. Penal Code section 2900.5, subdivision (a) states in relevant part: “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment”

Here, the parties do not dispute that defendant would be entitled to credit for time served in a custodial residential treatment facility. However, respondent asserts the appeal should be dismissed, because there is no statutory basis for it. Specifically, respondent argues defendant did not timely appeal the original commitment to state

prison, and brought his motion in the trial court to correct his credits fourteen months after entry of judgment.

The respondent is correct that an erroneous presentence credit calculation can be challenged on direct appeal from the judgment, which did not occur in the present case. (See, e.g., *People v. Acosta* (1996) 48 Cal.App.4th 411.) However, a trial court's failure to award the correct amount of presentence custody credit due to miscalculation or legal error is a jurisdictional defect that renders the sentence an unauthorized sentence and a nullity. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647.) It is settled that an unauthorized sentence is "subject to judicial correction *whenever* the error [comes] to the attention of the trial court or a reviewing court. [Citations.]" (*People v. Serrato* (1973) 9 Cal.3d 753, 763, italics added, disapproved on other grounds in *People v. Fosselman* (1983) 33 Cal.3d 572; see *People v. Karaman* (1992) 4 Cal.4th 335, 345-346, fn. 11 [even after jurisdiction has expired, trial court may correct judicial error that is void on its face]; *People v. Fares* (1993) 16 Cal.App.4th 954, 958 [no time limit to seek correction]; e.g., *Wilson v. Superior Court* (1980) 108 Cal.App.3d 816, 818-819 [trial court had jurisdiction to correct improper calculation of conduct credits long after time for filing appeal had expired].)

Here, the court had the ability to correct an erroneous sentence at any time, and as a result, defendant was entitled to file a motion to correct his presentence credits 14 months after his prison commitment. An order declining to correct an allegedly unauthorized sentence, such as the denial of defendant's motion in the present case affects defendant's substantial rights and is appealable under Penal Code section 1237, subdivision (b). Thus, we reject the respondent's contention that defendant's claim concerning presentence credit is not properly before us.

Having determined that defendant's appeal is proper in this case, the question presented is whether the trial court abused its discretion in summarily denying

defendant's motion to correct presentence credits. In denying the motion, the trial court did not make a factual finding as to whether the residential treatment facility in which defendant participated was custodial for purposes of credit.

“The question of whether a particular facility should be regarded as sufficiently restrictive as to amount to custody constitutes a factual question [citation], even though certain facilities by their very nature involve some restraint on untrammelled liberty [citation]. Although it is difficult to conceive of a live-in alcohol treatment program that does not include some modification of behavior and supervision, at least regarding the availability of alcohol, this does not necessarily constitute ‘custody.’ ” (*People v. Ambrose* (1992) 7 Cal.App.4th 1917, 1922.) “The courts which have considered the question generally focus on such factors as the extent freedom of movement is restricted, regulations governing visitation, rules regarding personal appearance, and the rigidity of the program's daily schedule.” (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 326.)

By our evaluation of the record, we find defendant's motion to correct presentence credits shown on its face that defendant very likely was entitled to additional custody credit for his spent in Sun Street Centers. The record shows that defendant was ordered to complete a residential treatment program as a condition of his probation as deemed necessary by his probation officer. In addition, the motion included a letter from Sun Street Centers that stated that defendant participated in the Men's Residential Program between August 28, 2004 and October 29, 2004, transferring to a less restrictive sober living environment from October 29, 2004 to April 15, 2005. Defendant's motion presented a sufficient showing that he was likely entitled to additional credit such that it necessitated at the very least, further investigation. Therefore, we find that trial court's summary denial of the motion an abuse of discretion, and remand the matter for hearing on the motion.

DISPOSITION

The order denying defendant's motion to correct presentence credits is reversed. The matter is remanded to the trial court with the directive that it hold a hearing on the issue of whether defendant is entitled to presentence credit for the time he spent at Sun Street Centers.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.